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CELGENE CORPORATION and SIGNAL
PHARMACEUTICALS, LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ANTONIO LUNA-MORAN,

Plaintiff,

v.

CELGENE CORPORATION, SIGNAL
PHARMACEUTICALS, LLC, and DOES
1-20, inclusive,

Defendants.

Case No. _____

**DEFENDANTS CELGENE
CORPORATION AND SIGNAL
PHARMACEUTICALS, LLC'S NOTICE
OF REMOVAL OF CIVIL ACTION
UNDER 28 U.S.C. § 1441(B)**

**TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA:**

PLEASE TAKE NOTICE THAT Defendants Celgene Corporation and Signal
Pharmaceuticals, LLC (collectively, "Defendants"), by and through their attorneys, submit this
Notice of Removal and, pursuant to 28 U.S.C. §1441, remove to this Court the state action
described below:

1. On or about August 9, 2016, Plaintiff Antonio Luna-Moran ("Plaintiff") filed a
Complaint in the Superior Court of the State of California in and for the County of San Francisco,
Case No. CGC-16-553584, captioned *Antonio Luna-Moran v. Celgene Corporation, Signal
Pharmaceuticals, LLC, and Does 1-20, inclusive*. Plaintiff caused the Complaint to be served on
Defendant Signal Pharmaceuticals, LLC on August 10, 2016. True and correct copies of the

1 Complaint, Summons, and accompanying documents served on Defendant Signal
 2 Pharmaceuticals, LLC are attached hereto as Exhibit A. Plaintiff caused the Complaint to be
 3 served on Defendant Celgene Corporation on August 18, 2016. True and correct copies of the
 4 Complaint, Summons, and accompanying documents served on Defendant Celgene Corporation
 5 are attached hereto as Exhibit B. On August 24, 2016, Defendants Celgene Corporation and Signal
 6 Pharmaceuticals, LLC filed their Answer in Superior Court, a true and correct copy of which is
 7 attached hereto as Exhibit C. No proceedings have been held in this action, and Exhibits A, B,
 8 and C constitute all process, pleadings and orders filed in this case.

9 2. This Notice of Removal is timely filed, pursuant to 28 U.S.C. §1446(b), in that it is
 10 filed within thirty (30) days of service of the Complaint and Summons. No previous Notice of
 11 Removal has been filed or made with this Court for the relief sought herein.

12 3. Plaintiff, at the time this action was commenced, was and still is a citizen of the
 13 State of California, and a resident of the State of California. (Complaint, at ¶ 1). Plaintiff alleges
 14 that “Plaintiff was, all times relevant hereto, a resident of the State of California.” (*Id.*).
 15 Residence is itself *prima facie* evidence of domicile. *State Farm Mut. Auto Ins. Co. v. Dyer*, 19
 16 F.3d 514 (10th Cir. 1994). Plaintiff further alleges that he was employed at Defendants’ San
 17 Francisco, California facility. (Complaint, ¶ 6).

18 4. At the time the Complaint was filed and presently, Defendant Celgene Corporation
 19 was and is a Delaware corporation with its principal place of business in Summit, New Jersey.
 20 (Declaration of Peter Chae In Support of Removal (“Chae Decl.”) ¶ 2). The appropriate test to
 21 determine a corporation’s principal place of business is the “nerve center” test. *Hertz Corp. v.*
 22 *Friend*, 130 S. Ct. 1181, 1192 (2010). Under the “nerve center” test, the principal place of
 23 business is the state where the “corporation’s officers direct, control, and coordinate the
 24 corporation’s activities” and where the corporation maintains its headquarters. *Id.* As Summit,
 25 New Jersey is the site of Celgene’s corporate headquarters and executive offices, where
 26 Celgene’s high level officers direct, control, and coordinate Celgene’s activities, (Chae Decl. ¶ 2),
 27 Celgene’s “nerve center” is in New Jersey. Since Celgene’s nerve center is in New Jersey, it is a
 28 citizen of the State of New Jersey, in addition to being a citizen of the State of Delaware, its state

1 of incorporation.

2 5. At the time the Complaint was filed and presently, Defendant Signal
3 Pharmaceuticals, LLC's sole owner and sole member was and is Celgene Corporation. (Chae
4 Decl. ¶ 2). As an LLC, Signal Pharmaceuticals was and is a citizen of the state of its sole owner
5 and sole member, Celgene Corporation. *See Johnson v. Columbia Props. Anchorage, LP*, 437
6 F.3d 894, 899 (9th Cir. 2006) ("an LLC is a citizen of every state of which its owners/members
7 are citizens."). At the time the Complaint was filed and presently, Celgene Corporation was and
8 is a Delaware corporation with its principal place of business in Summit, New Jersey. (Chae
9 Decl. ¶ 2). Since Celgene is a citizen of the States of New Jersey and Delaware, and because it is
10 the sole owner and sole member of Signal Pharmaceuticals, LLC, Signal Pharmaceuticals is a
11 citizen of the States of New Jersey and Delaware.

12 6. The Doe defendants named in the Complaint have no effect on this removal. *See*
13 *Newcombe v. Adolf Coors Co.*, 157 F.3d 686, 690-91 (9th Cir. 1998); 28 U.S.C. § 1441(a) (for
14 removal purposes, the citizenship of defendants sued under fictitious names shall be disregarded).

15 7. This action is a civil action of which the Court has original jurisdiction pursuant to
16 28 U.S.C. §1332. This entire action is one that may be removed to this Court by Defendants
17 pursuant to the provisions of 28 U.S.C. §1441(b), in that it is a civil action between a citizen of
18 the State of California (Plaintiff) on the one hand, and citizens of Delaware and New Jersey on
19 the other. Specifically, Defendant Celgene Corporation is a citizen of Delaware and New Jersey,
20 and Defendant Signal Pharmaceuticals is a citizen of Delaware and New Jersey by virtue of the
21 citizenship of its sole owner and sole member, Celgene Corporation, which is incorporated in
22 Delaware with its principal place of business in New Jersey.

23 8. It is apparent from the Complaint that the amount in controversy exceeds the sum
24 or value of \$75,000, exclusive of interest and costs. Defendants need only show that it is more
25 probable than not that Plaintiff's claimed damages exceed the jurisdictional minimum. *Sanchez v.*
26 *Monumental Life Ins. Co.*, 102 F.3d 398, 403-04 (9th Cir. 1996). Here, while Defendants deny all
27 liability and damages, Plaintiff's settlement demand in this case exceeds \$75,000 exclusive of
28 costs and interest. (*See* Sherman Decl. ¶ 2). Plaintiff has demanded \$995,000 to settle Plaintiff's

1 claims, including \$148,034 in alleged past lost wages, \$318,953 in alleged future lost wages, and
 2 \$512,257 in alleged emotional distress damages. (*Id.*) Plaintiff's settlement demand is
 3 admissible to prove that the case satisfies the amount in controversy requirement. *See Cohn v.*
 4 *Petsmart, Inc.*, 281 F.3d 837, 840 (9th Cir. 2002) (upholding admission of settlement offer to
 5 establish amount in controversy requirement, rejecting argument that settlement offer was
 6 inadmissible under Federal Rule of Evidence 408).

7 9. Further, the Court can reasonably ascertain from Plaintiff's Complaint and his
 8 prayer for relief that the amount in controversy exceeds \$75,000, on the following grounds:

9 a. Consistent with his settlement demand, Plaintiff alleges employment
 10 discrimination claims under the Fair Employment and Housing Act, and employment
 11 discrimination cases routinely satisfy the amount in controversy requirement. *See Simmons v.*
 12 *PCR Technology*, 209 F.Supp.2d 1029, 1034-35 (C.D. Cal. 2002) (surveying cases, finding
 13 jurisdictional minimum of \$75,000 clearly satisfied in employment discrimination case where
 14 employee sought damages including lost wages, punitive and emotional distress damages, and
 15 attorneys' fees); *Celestino v. Renal Advantage Inc.*, 2007 U.S. Dist. LEXIS 33827 (N.D. Cal.
 16 Apr. 24, 2007) (jurisdictional minimum met where Plaintiff claimed damages including loss of
 17 income and benefits, emotional distress and punitive damages).

18 b. Plaintiff further alleges he has suffered harm, including lost earnings and
 19 other employment benefits, mental and emotional distress, and other general and special damages.
 20 (See Complaint, ¶¶ 22, 33, 44, 54, 62). An award of damages for emotional distress alone can
 21 reasonably be anticipated to be far in excess of the jurisdictional minimum. *Simmons v. PCR*
 22 *Technology*, 209 F.Supp.2d 1029, 1034 (C.D. Cal. 2002) (citing case in which an award for pain
 23 and suffering in an employment discrimination case totaled \$3.5 million, and recognizing that
 24 "emotional distress damages in a successful employment discrimination case may be
 25 substantial"). Here, Plaintiff values his emotional distress claim at over \$500,000. (Sherman
 26 Decl. ¶ 2).

27 c. Plaintiff also seeks attorneys' fees pursuant to the California Fair
 28 Employment and Housing Act and the California Labor Code, including a Lodestar. (Complaint,

¶¶ 24, 35, 56, 77, 84, Prayer for Relief). It is well-settled that when authorized by statute, attorneys' fees are to be included in the calculation of the amount of Plaintiff's claims for purposes of determining whether the requisite jurisdictional minimum is met. *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1156 (9th Cir. 1998) ("[W]here an underlying statute authorizes an award of attorneys' fees, either with mandatory or discretionary language, such fees may be included in the amount in controversy"); *Brady v. Mercedes-Benz USA, Inc.*, 243 F.Supp.2d 1004, 1010-11 (N.D. Cal. 2002) (in deciding amount in controversy issue, court may estimate the amount of reasonable attorneys' fees likely to be recovered by plaintiff if he were to prevail). Plaintiff may recover attorneys' fees on his causes of action under the FEHA because the FEHA authorizes an award of reasonable attorneys' fees to a prevailing plaintiff. Cal. Gov. Code §12965(b). While Plaintiff's attorneys' fees cannot be precisely calculated, it is reasonable to assume that they could exceed a damages award. *Simmons, supra*, 209 F.Supp.2d at 1035. Attorneys' fee awards in FEHA cases can be sizeable. *See, e.g., Beaty v. BET Holdings, Inc.*, 222 F.3d 607 (9th Cir. 2000) (recognizing that award of attorneys' fees of \$376,250 may be appropriate in a FEHA case where compensatory damages were only \$30,000, but remanding to district court to clarify whether court had properly exercised its discretion to consider reducing the fee award). Other California courts have upheld large attorneys' fee awards in FEHA cases. *See Flannery v. Prentice*, 26 Cal.4th 572 (2001) (affirming award of attorneys' fees and costs of \$891,042); *Mangold v. California Public Utilities Comm'n.*, 67 F.3d 1470 (9th Cir. 1995) (affirming \$724,380 attorneys' fee award in FEHA and ADEA case where plaintiffs' damages awards were significantly less). Thus, Plaintiff's demand for attorneys' fees further increases the amount in controversy.

d. Plaintiff also seeks punitive damages. (Complaint, ¶¶ 23, 34, 45, 55, 63, 68, Prayer for Relief). The Court must take into account punitive damages for purposes of determining the amount in controversy where such damages are recoverable under state law. *Davenport v. Mutual Benefit Health and Accident Ass'n.*, 325 F.2d 785, 787 (9th Cir. 1963); *Brady, supra*, 243 F.Supp.2d at 1009. California law does not provide any specific monetary limit on the amount of punitive damages that may be awarded under Civil Code Section 3294.

1 *Boyle v. Lorimar Productions, Inc.*, 13 F.3d 1357, 1360 (9th Cir. 1994). Additionally,
 2 employment discrimination cases have the potential for large punitive damages awards.
 3 *Simmons, supra*, 209 F.Supp.2d at 1033. A punitive damages award may equal as much as four
 4 times the amount of the actual damages. *State Farm Mutual Auto Ins. Co. v. Campbell*, 538 U.S.
 5 408, 425 (2003). In *Aucina v. Amoco Oil, Co.*, 871 F.Supp. 332 (S.D. Iowa 1994), the defendant
 6 employer established that the amount in controversy exceeded the jurisdictional minimum in a
 7 discrimination and wrongful discharge lawsuit where the former employee asserted claims for
 8 lost wages, lost benefits, mental anguish, and punitive damages. The court noted that “[b]ecause
 9 the purpose of punitive damages is to capture a defendant’s attention and deter others from
 10 similar conduct,” the plaintiff’s claim for punitive damages “might alone” exceed the
 11 jurisdictional minimum. *Id.* at 334. Although Defendants vigorously deny Plaintiff’s allegations,
 12 if Plaintiff were to prevail on his punitive damages claim, that claim alone could exceed the
 13 jurisdictional minimum.

14 e. Finally, statistics from Jury Verdict Research’s “Employment Practice
 15 Liability: Jury Award Trends and Statistics,” based on state and federal verdicts in cases alleging
 16 discrimination, retaliation, wrongful termination, violation of whistleblower laws, and family and
 17 medical leave issues, further confirm that the amount in controversy exceeds \$75,000, exclusive
 18 of interest and costs. (Sherman Decl. ¶¶ 3-10, Exhibits 1-7).

19 10. Venue is proper in this district pursuant to 28 U.S.C. § 1441(a), because this
 20 district embraces the county in which the removed action has been pending.

21 11. Defendants will promptly serve Plaintiff with this Notice of Removal and file a
 22 copy of this Notice of Removal with the clerk of the state court in which the action is pending, as
 23 required by 28 U.S.C. § 1446(d).

24 12. In joining this Notice of Removal, Defendant Signal Pharmaceuticals, LLC does
 25 not concede that it is a proper party to Plaintiff’s lawsuit, and does not concede that it was
 26 Plaintiff’s employer.

27 WHEREFORE, pursuant to these statutes and in accordance with the procedures set forth
 28 in 28 U.S.C. § 1446, Defendants pray that the above-captioned action in the Superior Court of the

1 State of California in and for the County of San Francisco be removed therefrom to this Court.

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3 Dated: August 25, 2016

CURLEY, HURTGEN & JOHNSRUD LLP

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5 By /s/ Brian L. Johnsrud
6 BRIAN L. JOHNSRUD
7 Attorneys for Defendants
8 CELGENE CORPORATION and SIGNAL
9 PHARMACEUTICALS, LLC
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